

Notice of Allowability

Application No.

09/870,089

Examiner

Susan Ungar

Applicant(s)

NICOLETTE, CHARLES A.

Art Unit

1642

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to Election filed October 24, 2003.
2. ☒ The allowed claim(s) is/are 1-3.
3. ☐ The drawings filed on _____ are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).
- * Certified copies not received: _____.
5. ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
 - (a) ☐ The translation of the foreign language provisional application has been received.
6. ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application. **THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

7. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
8. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No. _____.
 - (b) ☐ including changes required by the proposed drawing correction filed _____, which has been approved by the Examiner.
 - (c) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No. _____.

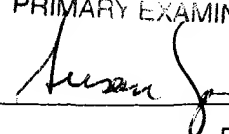
Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the margin according to 37 CFR 1.121(d).

9. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

- | | |
|--|---|
| 1 <input type="checkbox"/> Notice of References Cited (PTO-892) | 5 <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 2 <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 6 <input checked="" type="checkbox"/> Interview Summary (PTO-413), Paper No. _____. |
| 3 <input checked="" type="checkbox"/> Information Disclosure Statements (PTO-1449 or PTO/SB/08),
Paper No. <u>21,23</u> | 7 <input checked="" type="checkbox"/> Examiner's Amendment/Comment |
| 4 <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit
of Biological Material | 8 <input checked="" type="checkbox"/> Examiner's Statement of Reasons for Allowance |
| | 9 <input type="checkbox"/> Other |

SUSAN UNGAR, PH.D
PRIMARY EXAMINER



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1. An Examiner's Amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 C.F.R. § 1.312. To ensure consideration of such an amendment, it **MUST** be submitted no later than the payment of the Issue Fee.
2. The Election filed October 24, 2003 in response to the Office Action of August 22, 2003 is acknowledged and has been entered. Claims 1-9 are pending in the application and Claims 4-9 have been withdrawn from further consideration by the examiner under 37 CFR 1.142(b) as being drawn to non-elected inventions. Claims 1-3 are currently under prosecution.
3. Applicant's election with traverse of Group 1, claims 1-3, drawn to a composition comprising SEQ ID Nos 3, 5, 7, 9, 11, 13 is acknowledged. The traversal is on the ground(s) that given the search for all six peptides, it would not be an additional burden to examine groups comprising two or more immunogenic ligands. The argument has been found persuasive and the Groups drawn to claims 1-3 have been rejoined. Applicant argues that it is logical to rejoin the groups comprising claims 4-9 with all of the groups of claims 1-3. This argument has not been found persuasive for the reasons previously set forth and further because literature search, particularly relevant in this art, is not coextensive and different

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searches and issues are involved in the examination of each group. For these reasons the restriction requirement is deemed to be proper and is therefore made FINAL.

4. The application has been amended as follows:

In the specification:

On page 1, line 1, the phrase "THERAPEUTIC COMPOUNDS FOR OVARIAN CANCER" was deleted and the phrase --IMMUNOGENIC COMPOSITIONS-- was substituted

On page 1, line 6, after "May 31, 3000" the phrase, --now abandoned-- was inserted.

On page 126, line 10 "novocain" was deleted and --procaine-- was inserted.

In the claims:

Claims 4-9 were canceled.

5. Authorization for this Examiner's Amendment was given in a telephone interview with Elizabeth Lassen (508-270-2553) on December 23, 2003.

6. The following is an Examiner's Statement of Reasons for Allowance:

In view of the discrete nature of the claimed immunogenic ligands, that is that the claims as written are clearly drawn to immunogenic ligands consisting of SEQ

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ID NOS 3, 5, 7, 9, 11 and 13, wherein a search of the literature has disclosed that the discrete ligands in combination of two or more of the ligands are free of the art, the claims have been found to be allowable. A review of the literature has found that the closest prior art is Karpinski et al, PNAS, 1992, 89:4820-4824, IDS item 2 submitted 2/24/03 and Tsujimoto et al, J. Virol, 1991, 65(3)1420-1426, IDS item 1, submitted 2/24/03, both of which disclose the 351 amino acid sequence of ATF4 (see us-09-870-089b-13, sequence database search, Result 1, pages 1-2, attached hereto). There is no prior art drawn to any of the discrete claimed 9mer polypeptides. Finally, an inventor search and double patenting search did not reveal any applications with claims drawn to the instantly claimed invention.

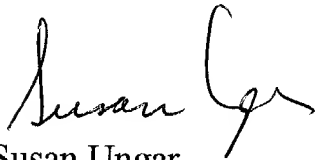
7. Any comments considered necessary by applicant must be submitted no later than the payment of the Issue Fee and, to avoid processing delays, should preferably **accompany** the Issue Fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Susan Ungar, PhD whose telephone number is (703) 305-2181. The examiner can normally be reached on Monday through Friday from 7:30am to 4pm.

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9. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Caputa, can be reached at (703) 308-3995. The fax phone number for this Art Unit is (703) 308-4242.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-4242.

A handwritten signature in black ink, appearing to read "Susan Ungar", with a stylized flourish at the end.

Susan Ungar
Primary Patent Examiner
December 23, 2003